

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EXXON MOBIL CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 3:16-cv-2921-N

UNITED STATES OF AMERICA,

Defendant.

AGREED CLAWBACK ORDER


Pursuant to Federal Rule of Evidence 502, this Order concerns the inadvertent production of privileged documents, if any, in discoveryE in the above-captioned case, including any production of documents by any third parties in response to any subpoenas issued in connection with this case.

1. This Order covers inadvertent disclosures, as defined in Federal Rule of Evidence (“FRE”) 502(b), of documents and other information covered by the attorney-client privilege, the work-product doctrine, and the taxpayer-communication privilege codified in 26 U.S.C. § 7525 (collectively, the “Privileged Material”) in this case. It therefore applies if:
 - a. the disclosure is inadvertent;
 - b. the holder of the privilege or protection (the “Producing Party”) took reasonable steps to prevent disclosure; and
 - c. the Producing Party promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26 (b)(5)(B).
2. The inadvertent disclosure of Privileged Material by a Producing Party for which the requirements of paragraph 1 are met shall not constitute a waiver of privilege with respect to such material, in either this or any other federal or state proceeding, pursuant to FRE 502(d).
3. Disclosures meeting the standards of FRE 502(a), *i.e.*, intentional disclosures, are not affected by this Order. Disclosures made pursuant to “quick peek” agreements do not constitute intentional disclosures.
4. Upon receiving notice of a claim of privilege (the “Notice”), any person or entity receiving such Privileged Material (the “Receiving Party”) must promptly return, sequester, or destroy the Privileged Material and any copies it has; must not use or disclose the Privileged Material until the claim is resolved; must take reasonable steps

to retrieve the Privileged Material if the Receiving Party disclosed it before receiving the Notice; and may promptly present the Privileged Material to the Court under seal for a determination of the privilege claim. The Producing Party must preserve the Privileged Material until the privilege claim is resolved.

5. If a Receiving Party wishes to dispute a claim of privilege asserted under this Order, such Receiving Party shall, within 14 days of receiving the Notice, move the Court under seal for an Order compelling disclosure of the Privileged Material. Until the expiration of 14 days after the motion to compel is finally resolved by the Court, the Receiving Party shall not use the Privileged Material for any other purpose and shall not disclose it to any person other than those required by law to be served with a copy of the sealed motion.
6. The Parties may stipulate to modify the time-periods specified in this Order.
7. By agreeing to this Order, neither Party waives a right to object to discovery or concedes that any discovery sought from it is permissible and proper.

IT IS SO ORDERED on this 7th day of April, 2017.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

STIPULATED AND AGREED:

THOMPSON & KNIGHT LLP

By: /s/ J. Meghan Nylin

Emily A. Parker
State Bar No. 15482500
emily.parker@tklaw.com
Mary A. McNulty
State Bar No. 13839680
mary.mculty@tklaw.com
William M. Katz, Jr.
State Bar No. 00791003
william.katz@tklaw.com
J. Meghan Nylin
State Bar No. 24070083
meghan.nylin@tklaw.com
1722 Routh Street, Suite 1500
Dallas, Texas 75201
(214) 969-1700
FAX (214) 969-1751

MILLER & CHEVALIER, CHARTERED

Kevin L. Kenworthy
D.C. Bar No. 414887
kkenworthy@milchev.com
George A. Hani
D.C. Bar No. 451945
ghani@milchev.com
900 16th Street NW
Washington, D.C. 20006
(202) 626-5800
FAX (202) 626-5801

**ATTORNEYS FOR PLAINTIFF
EXXON MOBIL CORPORATION**

UNITED STATES

By: /s/ Joshua D. Smeltzer

JOHN R. PARKER
United States Attorney
CORY A. JOHNSON
Senior Litigation Counsel
U.S. Department of Justice
P.O. Box 26
Washington, D.C. 20044
202-307-3046
202-514-9440 (FAX)
Cory.A.Johnson@usdoj.gov

JONATHAN L. BLACKER
JOSHUA D. SMELTZER
Trial Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
214-880-9765/9735 (v)
214-880-9741/9742/9774 (f)
Jonathan.Blacker2@usdoj.gov
Joshua.D.Smeltzer@usdoj.gov

**ATTORNEYS FOR THE UNITED
STATES**